HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.5807 OF 2004.

Smt.Juliet Coutinho & Anr. ..Applicants.

Versus.

State of Maharashtra & ors. ..Respondent.

Mr.Prosper D'Souza, advocate for the applicants.

Mr. Subhash Jha i/b Law Global for the respondent No.2.

Mr. S.R.Shinde, APP for the State.

CORAM: V.M.KANADE,J

DATE: MARCH 16, 2005.

P.C.

1. Heard the learned counsel for the applicant and respondent No.2 and the learned APP for the State.

2. The applicants take objection to the issuance of process by the Additional Chief Metropolitan Magistrate, 8th Court, Esplanade, Mumbai on 5/7/2003.

3. It is submitted by the learned counsel for the applicant that both these applicants had resigned from the company before the concerned transactions had taken place. The applicants resigned on the same day i.e. on 30th June,1997. The applicants have annexed certified copy of

the Form No.32. It is submitted by the learned counsel for the applicants that since they have neither incharge of or responsible for the business when the incidence in question had taken place, they are not liable to be prosecuted by the Respondent No.2. The learned counsel appearing on behalf of the respondent No.2 admitted at this stage that they do not have any material to contest or dispute the statement by the applicants, as also to dispute veracity of Form No.32 supplied by the applicants. In view of this, process issued against the applicants is liable to be quashed and set aside. I am fortified by the view taken by the Judgment of the Supreme Court in the case of **Municipal Corporation of Delhi V/s. Ram Kishan Rohtagi & Ors. reported in (1983) 1 Supreme Court Cases page 1**, wherein the Hon'ble Supreme Court in paragraph-19 has observed as under:

> "(19) In these circumstances, therefore, if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed have also committed the offence the Court can take cognizance against them and try them along with the other accused. But, we would hasten to add that this is really an extraordinary power which is conferred on the court and should be used very sparingly and only if compelling reasons exist for taking cognizance against the other person against whom action has not been taken. More than this we would not like to say anything

> further at this stage. We leave the entire matter to the law. We would, however, make it plain that the mere fact that the proceedings have been quashed against respondents 2 to 5 will not prevent the court from exercising its direction if it is fully satisfied that a case for taking cognizance against them has been made out on the additional evidence led before it."

4. However, in the event, at the subsequent stage if any material is found against the present applicants to indicate that either the Form No.32 which is filed by them is incorrect or false or that even after the said date they had acted as a director, particularly during the period from 6/10/1999 to 3/12/1999 and the other dates mentioned in the complaint, if such material is found, then they always have liberty to approach the Magistrate under section 319 of the Cr.P.C. to consider application on merits and as per the provisions of law. It is however, made clear that the Trial Court shall decide the matter on its own merit and exercise its discretion as per the provisions of section 319 Cr.P.C. With this clarification, criminal application is allowed. The Trial Court is directed to decide the complaint as expeditiously as possible and in any case, within a period of 6 months.

. Certified copy is expedited.

(V.M.KANADE,J)